

# **EXHIBIT 8**

## **Declaration of Trinidad Navarro**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION**

STATE OF KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-150-DMT-CRH  
Judge Daniel M. Traynor

**DECLARATION OF TRINIDAD NAVARRO**

I, Trinidad Navarro, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am Commissioner of the Delaware Department of Insurance (“DDOI”).
2. I submit this Declaration in support of the Final Rule, 89 Fed. Reg. 39,392, issued by the U.S. Department of Health and Human Services and Center for Medicaid Services permitting Deferred Action Childhood Arrivals (“DACA”) recipients to enroll in a qualifying health plan through an exchange pursuant to the Affordable Care Act (“ACA”). I have compiled the information in the statements set forth below through DDOI personnel who have assisted me in gathering this information from our agency. I have also familiarized myself with the Final Rule in order to understand its immediate impact on DDOI. The Final Rule benefits the State and Delaware residents.
3. By making DACA recipients eligible for subsidies on Delaware’s health insurance marketplace, the Final Rule ensures that more Delaware residents will have access to

affordable health insurance coverage. DDOI, as laid out in this declaration, can explain how increased access to affordable and adequate health insurance benefits both the State and its residents.

4. By contrast, as laid out in this declaration, a decision from a court invalidating the Final Rule on a nationwide basis would impose a series of other harms on the State of Delaware, including loss of revenue streams tied to the payment of insurance premiums.

#### The Delaware Department of Insurance

5. DDOI administers the laws of Delaware as they pertain to the protection of the insurance consumer through the regulation of the insurance industry. The work of DDOI includes: monitoring financial solvency; licensing insurance companies and producers; reviewing and approving rates and forms; overseeing the takeover and liquidation of insolvent insurance companies and the rehabilitation of financially troubled companies; and investigating and enforcing state laws and regulations pertaining to insurance.
6. Delaware operates a federally-facilitated exchange through [www.HealthCare.gov](http://www.HealthCare.gov) in partnership with the federal government. Under this model, Delaware is responsible for plan management, stakeholder outreach and consumer assistance functionality for the marketplace.

#### The Health Insurance Marketplace

7. The federal health insurance marketplace (the “Marketplace”), operated through [www.HealthCare.gov](http://www.HealthCare.gov), was established under the authority of the Patient Protection and Affordable Care Act. The Marketplace is a source of affordable health insurance for Delaware residents who do not have health coverage from their employers or access to other health care programs. Financial assistance to lower the cost of premiums and out-of-pocket expenses is available for eligible residents.

8. The Marketplace improves access to high-quality, affordable health coverage for Delaware residents. The program enables residents who are uninsured or underinsured to access affordable coverage to protect their health. During plan year 2024, Delaware's Marketplace served roughly 45,000 residents, a 29% year-over-year increase from 2023 plans and nearly 54% increase from 2018.
9. As of January 4, 2025, more than 51,000 Delaware residents have signed up for a 2025 health insurance plan through the Marketplace. This is an increase from the 44,842 residents who had selected plans by this time last year.
10. Delaware health plans offered through the Marketplace cover preventative services, emergency services, prescription drugs, prenatal and pediatric care, as well as other services. No one can be denied coverage due to a pre-existing condition.
11. Financial assistance under the Marketplace takes several forms, including advance premium tax credits and cost-sharing reductions. Premium tax credits help lower monthly premium payments. Cost-sharing reductions help lower out-of-pocket costs like deductibles and co-pays for doctor visits.
12. Due to the federal American Rescue Plan Act of 2021 and the federal Inflation Reduction Act of 2022, eligible Delaware residents are also able to receive expanded financial help from the federal government via additional subsidies and advance premium tax credits.
13. To be eligible for the Marketplace in Delaware, Delaware residents:
  - a. Must live in the United States and have a primary residence in Delaware;
  - b. Must be considered a resident of the United States and Delaware for tax purposes;
  - c. Must be a United States citizen or national or be lawfully present; and
  - d. Cannot be currently incarcerated.

14. Prior to the Final Rule, DACA recipients were not considered lawfully present for purposes of eligibility through the Marketplace. Under the Final Rule, DACA recipients are considered lawfully present for purposes of Marketplace eligibility.

State Revenue Derived from Insurance Purchased Through the Marketplace

15. As part of its efforts to make health insurance more affordable, Delaware has implemented, pursuant to 16 *Del. C.* § 9903(g), a state-based and state-administered reinsurance program. To fund the operation of the reinsurance program, pursuant to 18 *Del. C.* § 8703(b), DDOI collects from carriers a 2.75% assessment on “all amounts used to calculate the [carrier’s] premium tax liability or the amount of the [carrier’s] premium tax exemption value for the previous calendar year.”
16. Because health insurance carriers receive a monthly premium payment for each individual enrolled in their insurance plans, the total monthly premium collected by a health insurance carrier, which is used to calculate their premium tax liability, decreases as the number of enrollees decreases. And the total reassessment collected by Delaware correspondingly decreases as the number of enrollees decreases.
17. Thus, for each individual who ceases to be enrolled in a health benefits plan in Delaware, including plans sold on the Marketplace, the State loses revenue, whether through premium tax or through the value of the assessment collected under the reinsurance program.
18. According to U.S. Citizenship and Immigration Services, as of September 30, 2024 there were 1,140 active DACA recipients living in Delaware that may benefit from the Final Rule.
19. Most often, Delawareans who purchase insurance on the Marketplace do so to access subsidies that enable them to afford health insurance coverage that they otherwise could not afford. Indeed, more than 62% of Delawareans who purchase insurance on the Marketplace for plan

year 2024 had a household income of less than 250% of the federal poverty level, and over 90% received subsidies. Thus, for most enrollees, losing access to the Marketplace means not being able to afford private health insurance at all.

20. If a court issues an order rendering those DACA recipients who may have enrolled in Delaware plans offered on the Marketplace now ineligible for participation in ACA exchanges, the State would lose revenue based on insurance premiums under those plans no longer being collected, and thus carriers no longer being assessed the 2.75% reinsurance assessment based on those premiums. This would result a loss of revenue to the State.

#### Impact of Final Rule on Delaware

21. The Final Rule allows more Delaware residents to access the Marketplace, reducing the numbers of uninsured individuals in the State.
22. Beyond improving health outcomes, increased access to health insurance also results in financial benefits for DACA recipients. Access to affordable and adequate health care results in lower-cost preventative care and a decrease in high-cost emergency care, reducing the financial strain of costly medical bills.
23. The Final Rule states that there a slight positive effect on exchange risk pools by introducing DACA recipients to the individual market, because DACA recipients represent a pool of relatively young, healthy adults that are younger than the general exchange population. *See* 89 Fed. Reg. 39,396.
24. The Final Rule will likely benefit Delaware by introducing a pool of young, healthy individuals to the state's individual health insurance market. A health insurance risk pool is a group of individuals whose medical costs are combined to calculate premiums. Pooling risks together allows the higher costs of the less healthy to be offset by the relatively lower costs of the more

healthy. Because the largest component of health insurance premiums is the medical spending paid on behalf of enrollees, premiums reflect the expected health care costs of the risk pool. Therefore, when risk pools become healthier the entire market benefits.

25. Invalidating the Final Rule would also cause significant confusion and uncertainty in the insurance marketplace. Enrollees must pay the first month's insurance premium before coverage can start. Therefore, to the extent that premiums have already been paid by DACA recipients who have enrolled in plans on the Marketplace, they will need to be returned. To the extent that DACA recipients have scheduled medical appointments with network providers, these appointments may need to be cancelled or modified due to lack of insurance coverage.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 13<sup>th</sup> day of January, 2025, in DOVER, DE.

A handwritten signature in blue ink, appearing to read "Trinidad Navarro", is written over a horizontal line.

Trinidad Navarro, Commissioner  
Delaware Department of Insurance